written or spoken, is false and will, without more, support a verdict for substantial damages.

(4) That the press enjoys no special privilege or immunity, but stands in all respects before the law upon the same footing as the great body of citizens.

For these reasons, we are of opinion that the judgment should be affirmed.

Affirmed.

WHITTLE, J., absent.

Note.

See editorial comment on this case, ante, p. 877.

ELSNER BROS. *v.* HAWKINS, Revenue Com'r et al.

Jan. 11, 1912.

[73 S. E. 479.]

1. Pawnbrokers (§ 1*)—Police Power—Regulations.—The pawnbrokerage business, because of the opportunities it offers for the commission of crime and its concealment, is one which properly comes within the control of the police power of the state, and which is subject to the strictest regulation.

[Ed. Note.—For other cases, see Pawnbrokers, Dec. Dig. § 1.*]

2. Pawnbrokers (§ 2*)—Police Power—Delegation of Power by State—City Charter.—Under the charter of the city of Richmond the city council may enact suitable ordinances for the promotion of the safety, health, peace, good order, and morals of the city, and punish violations by any fine or penalty up to an amount limited by the charter. Held, the power delegated is broad enough to permit the city, in the interest of good order and the protection of its citizens, to provide that it shall be unlawful for pawnbrokers to deal in deadly weapons, and such an ordinance is a reasonable exercise of the power granted.

[Ed. Note.—For other cases, see Pawnbrokers, Cent. Dig. § 1; Dec. Dig. § 2.*]

3. Municipal Corporations (§ 63*)—Governmental Powers and Functions—Judicial Supervision.—Municipal corporations are prima facie the sole judges of the necessity and reasonableness of their ordinances, and as every intendment is in favor of the lawfulness of the exercise of power in making regulations to promote public

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

health and safety, the courts will interfere with such action only in case of a clear abuse.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 1378, 1379; Dec. Dig. § 63.*]

4. Municipal Corporations (§ 592*)—Police Power—Conflict of Ordinance with Statutory Provisions.—State Tax Bill (Code 1904, p. 2253) § 140, provides that no person shall sell pistols, dirks, or bowie knives without having first procured a license therefor and paid a privilege tax to the state. An ordinance of the city of Richmond provided that no such weapons should be sold in pawnshops. Pawnbrokers, who complied with the requirements of the statute, brought mandamus to compel the city officials to issue a license authorizing them to deal in such weapons. Held, the object of the statute was for the raising of revenue, not to give every person who paid the tax and obtained a license the right to carry on the business, notwithstanding police regulations to the contrary, and the ordinance was not void as in conflict with the statutory provisions.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 1311-1314; Dec. Dig. § 592.*]

Error to Hustings Court of City of Richmond.

Mandamus by Elsner Bros. against one Hawkins, Revenue Commissioner, and others. From a judgment dismissing the petition, plaintiffs bring error. Affirmed.

Wyndham R. Meredith, for plaintiffs in error.
H. R. Pollard and *Minitree Folkes,* for defendants in error.

HARRISON, J. The grand jury of the city of Richmond, having recommended, in the interest of the public safety, that pawnbrokers should not be allowed to deal in weapons which may be used for personal injury the council of the city passed an ordinance, approved April 18, 1911, providing that it shall be unlawful for any licensed pawnbroker, or any other person acting as pawnbroker, to receive as security, pledge, or pawn, or to purchase, sell, loan, or hire any pistol, dirk, bowie knife, razor, slung shot, or any weapon of like kind. Any person violating the provisions of this ordinance was made liable to a fine of not less than $5 nor more than $25 for each offense, recoverable before the police justice of the city.

The plaintiffs in error are a duly licensed firm of pawnbrokers, who had given the bond and complied with all the police regulations prescribed by the state statute, and had paid the license required both by the state and the city of Richmond.

Section 140 of the state tax bill (Code 1904, p. 2253) pro-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

vides that no person, firm, or corporation shall sell pistols, dirks, or bowie knives without having first procured a license therefor. The sum of $20 per annum is required to be paid to the state as a special license tax for the privilege of transacting the business of selling pistols, dirks, or bowie knives by any such persons, firm, or corporation, and any violation of the provisions mentioned is made a misdemeanor punishable by fine. Under this section 140 of the state tax bill the plaintiff applied to the proper officials of the city of Richmond for a special license authorizing them to deal in pistols, etc. Acting in obedience to the city ordinance of April 18, 1911, making it unlawful for any licensed pawnbroker to deal in pistols, etc., these city officials refused to issue the license asked for. Thereupon the plaintiffs in error applied to the hustings court for the city of Richmond for a writ of mandamus compelling the defendants in error to issue the license authorizing them to deal in pistols, etc. The hustings court having denied the writ of mandamus and dismissed the petition praying therefor, its judgment is brought under review by this writ of error.

The record shows that the ordinance of April 18, 1911, was passed by virtue of the police power which the city of Richmond deemed to be vested in it, and was intended to remedy to some extent the growing and dangerous practice, by the lawless and disorderly class in the community, of carrying concealed weapons.

The plaintiffs in error insist that the city of Richmond did not have the authority under its police power to pass the ordinance in question; that the statute of the state having made it lawful for a person, firm, or corporation to deal in pistols, etc., upon the payment of a license tax, the city of Richmond could not, under its police power, deny such privilege to pawnbrokers.

[1] The business of pawnbrokers, because of the facility it furnishes for the commission of crime and for its concealment, is one which belongs to a class where the strictest police regulation may be imposed. This is shown by our legislation, both state and local, on the subject, and by the adjudications of courts. Acts of Assembly 1904, p. 196 (Code 1904, p. 2232); Ordinances of Richmond City, c. 48, §§ 1, 2; Freund on Police Power, § 93; Launder *v.* Chicago, 111 Ill. 291, 53 Am. Rep. 625; Grand Rapids *v.* Braudy, 105 Mich. 670, 64 N. W. 29, 32 L. R. A. 116, 55 Am. St. Rep. 472.

In the case last cited it is said "that it is a matter of common knowledge that thieves resort to these places to dispose of their stolen goods, and that unscrupulous and oftentimes criminal persons are engaged in the business. The business, therefore, comes expressly within the control of the police power of the

state and is properly subject to reasonable rules and regulations."

[2] Very broad and comprehensive police powers are delegated by the Legislature to the city of Richmond. Under its charter the council has power to enact suitable ordinances to secure and promote the general welfare of the inhabitants of the city, such as they may deem proper for the safety, health, peace, good order, and morals of the community. In addition they have the power to make such ordinances and regulations as may be deemed desirable and suitable to prevent vice and immorality, to preserve public peace and good order, to prevent and quell riots, disturbances, and disorderly assemblages, etc. For a violation of any of its ordinances the council has power to prescribe any fine or penalty (except when a fine or penalty is otherwise provided for in the charter) not exceeding $500, and may provide that on failure to pay the fine or penalty imposed the offender shall be imprisoned in the jail of the city for any term not exceeding three calendar months.

The police powers delegated by these provisions to the city are, within its limits, quite equal to those possessed by the Legislature itself. They are certainly amply broad to cover and include the right of the city, in the interest of its good order and the protection of its citizens from violence, to provide that it shall be unlawful for any licensed pawnbroker, or other person acting as pawnbroker, to receive as security, pledge, or pawn, or to purchase, sell, loan or hire, any pistol, dirk, bowie knife, etc. In view of the character of the business conducted by these dealers, where the criminally disposed can go and for a pittance procure a deadly weapon for a deadly purpose that he would not otherwise be able to obtain, the ordinance assailed is not only reasonable, but eminently wise, as tending to minimize the commission of crime in a populous city.

[3] The rule is generally recognized that municipal corporations are prima facie the sole judges respecting the necessity and reasonableness of their ordinances. Every intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health and safety, and it is not the province of courts, except in clear cases, to interfere with the exercise of the powers vested in municipalities for the promotion of the public safety. McQuillin on Ordinances, § 186; 2 Dillon on Mun. Cor. (5th Ed.) § 649; California Red Co. *v.* Sanitary Red Works, 199 U. S. 306, 319, 26 Sup. Ct. 100, 50 L. Ed. 204; Wagner *v.* Bristol Belt Line Co., 108 Va. 594, 598, 62 S. E. 391, 25 L. R. A. (N. S.) 1278.

[4] The plaintiffs in error contend that under section 140 of the revenue bill, supra, any person, firm, or corporation can sell

pistols, dirks, etc., by first procuring a license therefor; that the ordinance forbidding such a license to pawnbrokers is in conflict with the state law and therefore void, unless the city of Richmond had express power to enact the same.

This question was settled in this state more than 50 years ago. Mayo, Mayor, etc., *v.* James, 53 Va. 17. In that case Clinton James, a free negro, who had been duly licensed to keep a cook shop under the provisions of an act of assembly of April 17, 1853, complained that he had been unlawfully prosecuted before the mayor of the city of Richmond for the violation of an ordinance thereof, which provided that no negro should keep a cook shop within the city under the penalty of stripes, at the discretion of the mayor, insisting that the ordinance was in conflict with the act of assembly, and therefore void. The circuit court awarded a writ of prohibition in vacation, restraining the mayor from enforcing the ordinance, and upon the hearing refused to discharge the writ and gave judgment against the city. Upon appeal that judgment was reversed by this court, upon the ground that a statute requiring a license to keep a cook shop, and laying a tax upon it, is not in conflict with, and does not avoid, an ordinance of the city of Richmond, passed in pursuance of its charter, prohibiting or restricting the keeping of cook shops by free negroes within the city. In reaching this conclusion, Judge Moncure, speaking for a unanimous court, says: "The only object of the act was to aid in raising revenue by laying a tax on the business of keeping a cook shop. It was not the object or effect of the act to give to every person who paid the tax and obtained a license to keep a cook shop the right to do so, notwithstanding any police regulations which might otherwise lawfully be made for the good government of a city or town, much less to repeal or annul any such regulations in actual existence at the time of the passage of the act. If the ordinance would have been lawful, had there been no such act, it is lawful notwithstanding the act; for there is nothing in the act to render it unlawful. The business of keeping a cook shop before the passage of the act was a lawful business, which any man might pursue, subject only to such lawful police regulations as might be made in regard to its being carried on within the limits of a town. The effect of taxing it was to restrict, not to enlarge, the right of pursuing it, nor to exempt it from such lawful police regulations."

The case at bar is in all essential particulars like the case cited, and is controlled by it. The object of section 140 of the tax bill, like the act in Mayo *v.* James, supra, was to aid in raising revenue. It was not the purpose or effect of the act, in laying a tax on the business of selling pistols, dirks, etc., to give to every person, who paid the tax and obtained a license, the right to carry

on such business notwithstanding any police regulations which might otherwise lawfully be made for the good government of a city or town. The ordinance assailed would have been lawful, had there been no section 140 of the tax bill, and it is lawful notwithstanding that act; for there is nothing in the act to render it unlawful or in conflict therewith. As said in Mayo *v.* James, supra, with respect to the keeping of cook shops in Richmond by free negroes, the propriety and necessity of regulating, restraining, or wholly interdicting the right of pawnbrokers to deal in pistols, dirks, etc., in the city of Richmond must be apparent to all.

For the foregoing reasons, we are of opinion that the ordinance of April 18, 1911, which is called in question by this proceeding, is not in conflict with section 140 of the tax bill, that the city council had the power under its charter to enact the same, and that the judgment of the hustings court of the city of Richmond, so holding, must be affirmed.

Affirmed.

Note.

There is a conflict of authority upon the question on the decision of which court and counsel have rested this case, namely, whether a city, under its police power, may prohibit an occupation, a license to carry on which is provided for by the general law, but we do not see how the case of Mayo *v.* James can be regarded otherwise than as being stare decisis as far as this case is concerned. Mr. McQuillin takes the affirmative view of this question. State *v.* Clark, 54 Mo. 17, 36, is very nearly, if not quite, the precise converse of this case, and supports the affirmative view.

Holding the contrary are: Perry *v.* Salt Lake City, 7 Utah 149; Flood *v.* State, 19 Tex. Cr. 584; State v. Brittain, 89 N. C. 74. Butte *v.* Paltovitch, 30 Mont. 18, 21, leans that way. So does Ex parte Powell, 43 Tex. Cr. 391, 66 S. W. 298.

But Mayo *v.* James is decisive, as there seems no ground for the claim that the fact of James being a free negro influenced the decision there, for the court expressly states its opinion that the license by the state did not give every one holding same the right to operate thereunder notwithstanding a prohibitive police regulation of the city, applicable to a certain class (free negroes), on a subject proper for such regulation.

Yet a doubt arises whether, either in Mayo *v.* James or in the principal case, **it was necessary** to decide that where a state license is granted to pursue a specified occupation on compliance with the state law, a city could, however expedient it might seem to it, in the exercise of its police power, absolutely prohibit the carrying on of such occupation. Such was the Texas case above cited of Ex parte Powell.. By this we mean that the city ordinance in question, both in Mayo *v.* James and in the principal case, does not nullify the state law providing for a state license to carry on a particular occupation. In each case, the subject being peculiarly within the scope of the police power as universally interpreted, the ordinance merely prohibits the granting of such a license, or the exercise of the business thereunder, to or by a certain limited class. such action being in the exercise of its discretionary police power to promote the pub-

lic welfare. Thus, when closely considered, these ordinances are not strictly speaking prohibitive. They are regulative, and are only prohibitive as to a certain limited class, in the one case free negroes, and in the other pawnbrokers. Examining the principal case, we find that the right to sell pistols, etc., in the City of Richmond is not taken away from any one outside of the limited class of licensed pawnbrokers or persons acting as pawnbrokers. All others are free to pursue this occupation under the state license, upon paying the city license tax. It will be noticed that the ordinance in question here also declares it unlawful "for any licensed merchant, dealer in secondhand articles of other persons to sell or otherwise dispose of any such weapon without first having obtained a permit from the Chief of Police of the City of Richmond authorizing such merchant, dealer or persons to purchase or sell such weapons." If this applies to the ordinary sale of such weapons, in usual course of business by a merchant, as it literally does, and should a case arise under this clause, and a licensed merchant be refused the permit here provided for, under a policy of the city to stop the sale of such weapons entirely, we think the question will be squarely presented whether such a prohibitive ordinance nullifying the license to sell such weapons is valid. And we think it can be forcibly and successfully argued that it has never been squarely decided in this state, although both counsel and court seem to assume that it is presented in this case.

J. F. M.

ADAMS EXPRESS CO. v. SCOTT.

Jan. 18, 1912.

[73 S. E. 450.]

1. Carriers (§ 218*)—Carriage of Live Stock—Limitation of Liability.—A common carrier is not an insurer of animals from injuries arising from their vicious nature and propensities, and which could not have been prevented by the exercise of foresight, vigilance, and care, so that an express company was entitled to limit its liability in that respect.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 674-696, 927-949; Dec. Dig. § 218.*]

2. Carriers (§ 213*)—Carriage of Live Stock—Liability for Injuries.—No recovery can be had for injury caused by delay in shipment of an animal by an express company, where such delay was caused by the refusal of the owner to accept freight movement.

[Ed. Note.—For other cases, see Carriers, Dec. Dig. § 213.*]

3. Carriers (§ 215*)—Carriage of Live Stock—Liability for Injuries.—No recovery can be had for injuries to a horse delivered for shipment, caused by the horse hitting his feet, legs, and body against

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.